Under section 16(1)(a) of the Control of Rent Act, 1966 the landlord may obtain possession of the premises where rent lawfully due is in arrears for 14 days or upwards. But can rent be in arrears where there is a demand for an unlawful sum?

Appellant relied on the High Court decision in *Pritam Kaur* v. *Rajaratnam & Anor.*[1] In that case it was held that "to be lawful the rent demanded must be that sanctioned by law". The Rent Assessment Board having fixed the maximum recoverable rent at $7, the only lawful rent that could be demanded by the plaintiff, it was held, was $7: even if there had been an agreement to raise rental to $46, the demand for the increased rental would be unlawful, the increase in rent not having been sanctioned by the Rent Assessment Board. It was therefore held that there having been no lawful demand for rent by the plaintiff, defendants were therefore not in arrears of rent, and no order for possession could be made.

Whilst holding that the increase in rent was unlawful (a finding with which I respectfully agree), the learned President sought to distinguish between that decision and the Court of Appeal decision in *Annamalai Chettiar* v. *Yeoh Kee Tin.*[2]

I do not think it will be necessary to distinguish the former decision from the latter decision. If my understanding of the Court of Appeal decision is correct and of course I am bound by it, then even if there had, as the learned President had found in the present case, been a demand on the premises of a larger and unlawful sum, the tenant was yet bound to pay the rent lawfully due *i.e.* $220 per month, and arrears of such rent would entitle the landlord to invoke the aid of section 16(1)(a) of the Act.

Reverting to the matter of computation of what is due, it is indeed a pity that questions were not put to determine from respondent what he meant by "$1000 over", though I would agree with counsel for respondent that in crediting appellant with having thereby paid $2000, the learned President was erring in his favour. I would therefore say that balance of $9,500 found to be due as rent is correct.

Lastly appellant contends that the notice to quit was not valid, and therefore there had been non-compliance with section 16(5) of the Act. No arguments were advanced to support this view either before me or in the court below. There is nothing, from the evidence taken as a whole to indicate that the tenancy was not a monthly one, commencing on the 1st day of the month and ending on the last day of that month. Whilst any notice short of a month would be invalid, Exhibit P4 dated July 24, 1971 gave more than a month's notice ending on August 31, 1971. I also agree with the learned President that even though demand for rent in excess of the lawful rent had led to the issue of the notice, it was nevertheless good.

I would therefore affirm the judgment of the learned President and dismiss this appeal with costs. Appellant is further ordered to deliver vacant possession of the premises within one month of the date of the delivery of this judgment.

Appeal dismissed.

Solicitors: *Rajendra & Teik Ee; Zain & Co.*

HASHIM BIN SAUD v. YAHAYA BIN HASIM & ANOR.

[O.C.J. (Harun J.) December 24, 1976]
[Alor Star — Civil Suit No. 203 of 1972]

Administrative Law — Claim for damages for wrongful detention and denial of right to consult counsel — Arrest of plaintiff — Whether justifiable — When right to counsel can be exercised — Criminal Procedure Code (F.M.S. Cap. 6), ss. 23 and 117 — Federal Constitution, Article 5(3).

Constitutional Law — Right to counsel — Person under detention — Federal Constitution, Article 5(3).

The plaintiff claimed damages for wrongful detention and denial of right to consult counsel. The plaintiff had been arrested on August 8, 1952 on suspicion of being involved in the theft of an electricity generator. On August, 9, 1952 as the investigations were not completed, the accused was produced in court and an application made for their further detention till August 19, 1972. The plaintiff was released on August 14, 1972. The plaintiff was not allowed to see counsel during the period of his detention when police investigations were in progress.

Held: (1) on the facts the arrest of the plaintiff was lawful as there was reasonable suspicion that the plaintiff was concerned with the theft. It followed that his subsequent detention by the police before production before the Magistrate and subsequently by the special order of the Magistrate was legal;

(2) where a person is lawfully detained, his detention does not become unlawful if the police deny that person his right to consult and be defended by a legal practitioner of his choice;

(3) under the Federal Constitution it is provided that a person who is arrested shall be allowed to consult and be defended by a legal practitioner of his choice but there is no provision that he be informed of that right;

(4) a lawyer has no constitutional right of access to an arrested person but it is not necessary for an arrested person to exercise his right to consult a lawyer and make his choice of a practising lawyer before that lawyer is entitled to see him;

(5) the right to consult counsel begins from the moment of arrest but the exercise of that right is postponed for so long as the arrested person is detained under section 117 of the Criminal Procedure Code;

(6) the claim for damages in this case therefore failed and must be dismissed.

Cases referred to:-

(1) *Shaaban & Ors.* v. *Chong Fook Kuan & Anor.* [1969] 2 M.L.J. 219.

(2) *Chong Fook Kuan & Anor.* v. *Shaaban & Ors.* [1968] 2 M.L.J. 53.

(3) *Lee Mau Seng* v. *Minister for Home Affairs & Anor.* [1971] 2 M.L.J. 137.

(4) *Ooi Ah Phua* v. *OCCI Kedah/Perlis* [1975] 2 M.L.J. 198.

(5) *Public Prosecutor* v. *Mah Chuen Lim & Ors.* [1975] 1 M.L.J. 95.

(6) *Sunder Singh* v. *Emperor* A.I.R. 1930 Lah. 945.

(7) *Moti Bai* v. *State* A.I.R. 1954 *Rajasthan* 241.

(8) *Ramli bin Salleh* v. *Inspector Yahya bin Hashim* [1973] 1 M.L.J. 54.

CIVIL SUIT.

Karpal Singh for the plaintiff.

Abu Talib bin Othman, Senior Federal Counsel (*Zaleha binte Zahir*, Federal Counsel, with him) for the defendants.

Harun J.: This is a claim for damages for wrongful detention and denial of right to consult counsel.

On November 24, 1969 one Syed Omar lodged Report No. 461/69 at the Kota Sarang Semut Police Station that the electricity generator on his brother's land at Bukit Choras had been stolen. Inspector Yahaya (the first defendant) carried out investigations but could not make headway due to lack of information.

On May 1, 1971 one Ismail lodged Report No. 94/71 at Pendang Police Station that a cement mixer had been stolen. Inspector Yahaya carried out investigations. Five persons were arrested in connection with the theft. They were charged in court and all five were subsequently convicted.

In the course of these investigations Inspector Yahaya received information that the plaintiff was involved in the cement mixer case. He looked for the plaintiff but could not find him at his usual address. On August 5, 1972, Inspector Yahaya received information from a source which he considered reliable that the plaintiff was also involved in the theft of the electricity generator. According to him, this information confirmed an earlier information from one of the detectives under his command. He also said he did not act on the earlier information as he wanted to be sure. The gist of the information is that the plaintiff had joined in a conspiracy to steal the generator three days before the actual theft; had a lot of cash with him soon after the theft and was spending money freely; and when asked where he got the money from said "You refused to join."

On August 7, 1972, Inspector Yahaya went to Kota Sarang Semut Police Station and ordered the O.C.S. Sgt. Mohamad to arrest the plaintiff and two others on suspicion of being involved in the theft of the electricity generator. On August 8, 1972 at 10.00 a.m. Sgt. Mohamad arrested the plaintiff at Kota Sarang Semut and had him sent to Pendang Police Station. On the same day at 10.10 a.m. and at 3 p.m. respectively Sgt. Mohamad arrested the other two persons and had both sent to Pendang Police Station.

Inspector Yahaya saw the plaintiff at Pendang Police Station lock-up at 2 p.m. on August 8, 1972. He informed the plaintiff that he had been arrested on suspicion of being concerned in the theft of the electricity generator and the cement mixer. He interrogated the plaintiff from 3.15 p.m. to 5.05 p.m. that day. As he could not complete his investigations, he brought the plaintiff and the other two persons before a Magistrate the following morning and applied for an order of detention under section 117 of the Criminal Procedure Code (C.P.C.). The Magistrate's notes and order read:

"All 3 suspects produced at 9.50 a.m. I am satisfied that investigation could not be completed within 24 hours. Suspects are therefore remanded till August 19, 1972."

It will be noted that this order of detention by the Magistrate is in respect of the theft of the electricity generator only.

After obtaining the detention order, Inspector Yahaya brought the plaintiff and the others to Pendang Police Station. He continued his interrogation of the plaintiff that evening and on subsequent days as the plaintiff kept on changing his story. During the interrogation on August 13, 1972 which concluded at 10 p.m. the plaintiff admitted to being involved in the theft of the cement mixer but maintained that he did not steal the electricity generator as he had declined to join in a conspiracy to steal the generator three days before the actual theft. On August 14, 1972 at 7.10 a.m. after consulting his superior officer, he released the plaintiff. All actions taken by Inspector Yahaya in connection with the investigation into this case are recorded in an investigation diary maintained by him in accordance with section 119 of the C.P.C.

I now deal with the two aspects of this case. Firstly, the arrest of the plaintiff and his detention by the police from 10.00 a.m. on August 8, 1972 to 9.50 a.m. on August 9, 1972. The theft of the electricity generator from the pump house is an offence under section 380 of the Penal Code and is categorised as a "seizable offence" in the First Schedule to the C.P.C.: section 2 C.P.C. This means that a police officer may arrest any person who has been concerned in the theft without a warrant. Section 23(i)(a) of the C.P.C. provides:

"(i) Any police officer or penghulu may without an order from a Magistrate and without a warrant arrest —

(a) any person who has been concerned in any offence committed anywhere in Malaysia which is a seizable offence under any law in force in that part of Malaysia in which it was committed or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;"

In this case there was a police report of the theft — No. 461/69. There was credible information against the plaintiff in that the source had previously proved to be reliable in the sense that information given by this source had led to arrests, prosecutions and convictions. And finally the gist of the information given on August 5, 1972 to Inspector Yahaya concerning the plaintiff was sufficient to arouse the suspicion of any reasonable person that the plaintiff was concerned with the theft. The test of reasonable suspicion to be applied in a case like the present is dealt with by the Privy Council in *Shaaban & Ors.* v. *Chong Fook Kam & Anor.*[1] and I am satisfied that the arrest of the plaintiff was in accord with that test and was lawful. It follows that his subsequent detention by the police under section 28 of the C.P.C. was also lawful as investigations were in progress and the plaintiff was produced before a Magistrate within 24 hours of his arrest. His subsequent detention up to August 14, 1972 is clearly lawful as it was by a special order of a Magistrate under section 117 C.P.C.: see the decision of the Federal Court in *Chong Fook Kam & Anor.* v. *Shaaban & Ors.*[2]

I next turn to the second aspect of the case which is in two parts:

(1) The denial of right to consult counsel had made the lawful detention unlawful.

(2) Liability in damages for denying right to consult a legal practitioner of his choice.

The first part can be disposed of shortly on the authority of *Lee Mau Seng* v. *Minister for Home Affairs & Anor.*[3] where Wee Chong Jin C.J. at page 140 said:

"The right to consult a legal practitioner of one's choice is an entirely different concept from the concept of detention

without trial and they can exist together. It clearly cannot be inconsistent for a person who can be lawfully detained under preventive detention powers without trial to retain his constitutional right under article 5(3) to be allowed to consult a legal practitioner of his choice."

And at page 141, the learned Chief Justice said:

"... *habeas corpus* is not an available remedy to a person who, after his arrest by the police and under lawful detention by the police under powers conferred by section 74 of the Act, has been refused by the police to be allowed his constitutional right under article 5(3) of the Constitution to be allowed to consult a legal practitioner of his choice. Such a person must seek other available remedies..."

This passage was quoted with approval by the Federal Court in *Ooi Ah Phua* v. *OCCI Kedah/Perlis*[4] where Suffian L.P. at page 201 said:

"Ooi had been detained by order of a Magistrate, and so there was no question of his detention being unlawful."

Putting it in another way, the legal position is that where a person is lawfully detained, his detention does not become unlawful if the police deny that person his right to consult and be defended by a legal practitioner of his choice. When there is a denial of the right the aggrieved person's remedy lies elsewhere which brings me to the second part.

Liability in damages for denying right to consult a legal practitioner of his choice.

The events leading up to the foundation of this claim in damages are as follows:

The plaintiff was arrested at 10.00 a.m. on August 8, 1972.

At 9.50 a.m. on August 9, 1972 the Magistrate issued an order under section 117 C.P.C. to detain the plaintiff until August 19, 1972. At 5.30 p.m. on August 9, 1972, a person claiming to be from a legal firm visited Inspector Yahaya at his quarters with the following letter:

"Inspector Yahaya,
Pendang Police Station,
Pendang,
KEDAH.

Dear Sir,

Re: *Hashim bin Saud*

We have been approached by Che Ramli bin Salleh, the father-in-law of the abovenamed to act for the abovenamed.

We understand the abovenamed has been detained by you on 8th instant.

We are instructed to apply to you for an opportunity to see the abovenamed for consultation as soon as possible.

Kindly inform us by return the exact time when our Mr. Karpal Singh could attend at the Police Station, Pendang, or elsewhere to interview the abovenamed.

Needless to say, the abovenamed has a constitutional right to consult a legal practitioner after his arrest.

We would be grateful if you would grant our request.

Yours faithfully."

Inspector Yahaya wrote a note on the letter as follows:

"You can see your client on August 19, 1972."

He also said he could not give an earlier date as this might hamper police investigations. The constitutional right referred to is Article 5(3) of the Constitution which reads:

"Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice."

It is a fact that counsel did not see the plaintiff throughout the period of his detention. It is also a fact that the plaintiff did not ask the police to be allowed to consult a legal practitioner of his choice. This is not the first time where a lawyer who has been instructed by the relative of an arrested person has been denied access. A similar situation arose in *Public Prosecutor* v. *Mah Chuen Lim & Ors.*[5] where it was held *inter alia*:

"it had not been shown in this case that the arrested persons had requested to consult and be defended by a legal practitioner of their choice and that this request had been refused and that there could not be any justification for the complaint when what was shown was that a legal practitioner who had not yet been chosen to defend the arrested persons was not allowed to see them."

In the same case, Syed Othman J. at page 95 said:

"In my view, from this wording (Article 5(3) of the Constitution) the right given is to an arrested person and not to a legal practitioner. The constitutional right of an arrested person to counsel cannot be equated with the right of counsel, if any, to an arrested person. Counsel is merely the object of an arrested person's right."

With respect I agree with Syed Othman J. but would state the position as follows: —

The right of an arrested person to choose a legal practitioner of his choice can be divided into two parts. There is the *right* which the Constitution recognises. Article 5(3) prescribes that an arrested person shall be *informed* of the grounds of his arrest but does not prescribe that the arrested person shall be *informed* of his right to consult and be defended by a legal practitioner of his choice. It merely prescribes that he *shall be allowed*. Unlike in America, therefore there is no duty on the part of the police to inform the arrested person of his right to counsel. It may be that Malaysians are more aware of their constitutional rights than Americans and are expected to exercise it the moment they are arrested without having to be reminded of their rights.

Then there is the *choice*. It is argued that if an arrested person does not exercise this right then no lawyer can see him even though instructed by relatives. I do not think this constitutional provision was intended to go so far. It is fair to say that it is a common occurrence for the relatives of an arrested person to instruct a lawyer to look after the interests of a member of the family who has been arrested. It is also fair to say that most citizens in this country do not personally know any lawyers and for the most part of their lives there is no need to. In such circumstances, it is too much to expect an arrested person, even if he is aware of his constitutional rights to make a choice of his lawyer. I do not think that this constitutional provision is intended to be obstructive. Rather I would expect those in authority to do everything possible that is reasonable to uphold the Constitution both in letter and spirit. It will not be unconstitutional for the police to inform an arrested person of his right to consult a lawyer, or if a lawyer has been instructed by relatives for the police to convey this information to an arrested person or even allow the lawyer to see the arrested person. It is then up to the arrested person to exercise his *choice*. He can decide he does not want the lawyer appointed by his relatives or even that he does not require any

legal assistance at all. I agree that a lawyer has no constitutional right of access to an arrested person but I do not agree to the proposition that unless an arrested person has exercised his right to consult a lawyer and made his choice of a particular lawyer then no lawyer shall be permitted to see him.

The next point to consider is when does the right begin. This point has been thoroughly discussed recently and I need only quote Suffian L.P. in *Ooi Ah Phua's* case where he said:

"... I agree that the right of an arrested person to consult his lawyer beings from the moment of arrest, but I am of the opinion that that right cannot be exercised immediately after arrest."

The question then is when can it be exercised. In *Sunder Singh* v. *Emperor*,[6] Bhide J. said:

"The right of a prisoner to have access to legal advice must of course be subject to such legitimate restrictions as may be necessary in the interests of justice in order to prevent any undue interference with the course of investigation."

In *Moti Bai* v. *State*,[7] Modi J. said:

"... subject to reasonable restrictions as to time and convenience."

In *Lee Mau Seng* v. *Minister for Home Affairs, Singapore & Anor.*,[3] Wee Chong Jin C.J. said:

"... this right must be granted to him within a reasonable time after his arrest."

In *Ramli bin Salleh* v. *Inspector Yahya bin Hashim*,[8] Syed Agil Barakbah J. said:

"that right should be subject to certain legitimate restrictions which necessarily arise in the course of police investigation ... such restrictions may relate to time and convenience of both the police and the person seeking the interview and should not be subject to any abuse by either party."

In *Ooi Ah Phua* v. *OCCI, Kedah/Perlis*,[4] Hashim Yeop A. Sani J. said:

"the right... should be reconciled with the duty of the police to investigate into the offence and such right should not be exercised to the detriment of such investigation."

In *Public Prosecutor* v. *Mah Chuen Lim & Ors.*,[5] Syed Othman J. said:

"... the right is to be given 'with all convenient speed'. What is 'convenient speed' would depend on the circumstances of each particular case."

And finally the Federal Court decision in *Ooi Ah Phua's* case where Suffian L.P. considered all these authorities and said:

"... the right of the person under the second limb of that clause (Article 5(3) of the Constitution viz. the right to consult counsel) should be reconciled with the duty of the police to investigate into an offence under the Criminal Procedure Code so that a proper investigation, and consequently an expeditious trial can be made possible. A speedy trial is certainly an unwritten right of every person accused of an offence. The right of the person under the second limb of that clause should not be exercised to the detriment of investigation. The authorities concerned must however exercise their discretion in good faith to enable the person arrested to exercise his right under that clause. Since the end of justice is justice and the spirit of justice is fairness then each side should have equal opportunity to prepare its own case fully, freely and fairly before the court."

Applying the law as stated to the facts of this case I find that the right to exercise the right to consult counsel occurred during two periods, viz:

1. When the plaintiff was first detained by the police under section 28 of the Criminal Procedure Code, *i.e.* within the first 24 hours after his arrest. The right, however, was not exercised by the plaintiff during this period and in fact there is no claim arising out of this detention.

2. When the plaintiff was detained by order of the Magistrate under section 117 C.P.C. That section provides:

"117 (i) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall forthwith transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before such Magistrate.

(ii) The Magistrate before whom an accused person is produced under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case and considers further detention unnecessary he may order the accused person to be produced before a Magistrate having such jurisdiction or, if the case is triable only by the High Court, before himself or another Magistrate having jurisdiction with a view to committal for trial by the High Court.

(iii) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing."

The purpose of a detention under section 117 C.P.C. therefore is to enable the police to *complete investigations*. The detention itself is subject to judicial control. The power to detain rests squarely and fully on the Magistrate not the police. The Magistrate is required to satisfy himself on every occasion if detention is at all necessary and if so to determine the length of time actually required to complete the investigation — section 117(ii) C.P.C. If he orders detention he must record his reasons for doing so — section 117(iii) C.P.C. To enable the Magistrate to make the decision whether to detain or not the police must supply the Magistrate a copy of the investigation diary — section 117(i) C.P.C. This copy of the investigation diary to be transmitted to the Magistrate must contain all the particulars as required under section 119 C.P.C., that is to say, the police must tell the Magistrate all they know so far up to time of application and not what they think the Magistrate need only know. I pause here to observe that such diaries are likely to contain particulars which would not be admissible evidence at a trial. The law, however, requires that the Magistrate should be supplied with all this information. A likely consequence would be that where a Magistrate has made an order of detention based on such inadmissible or prejudicial evidence, he should not subsequently hear the case. Instances of such evidence appear in the Investigation Diary of this case *e.g.* what the informer told Inspector Yahaya (although if there is a trial, the informer will not be called) and the plaintiff's admission that he was involved in the theft of the cement mixer and in the conspiracy to steal the electricity generator.

It will be seen that the law regarding the constitutional right to consult counsel must be reconciled with actual practice with regard to police investigations under the Criminal Procedure Code. It seems to me that as the purpose of detention under section 117 C.P.C. is for the purpose of completing investigations and as the constitutional right to consult counsel "should not be exercised to the detriment of investigation", then for so long as an arrested person is detained under section 117 C.P.C. he cannot exercise his right to consult counsel. I therefore hold that the right to consult counsel begins from the moment of arrest but the exercise of that right is postponed for so long as the arrested person is detained under section 117 C.P.C.

In this case the request to consult counsel was made during the period the plaintiff was under detention under section 117 C.P.C. The plaintiff therefore, could not exercise his right at the material time and consequently there could not be a denial of such right.

In the event I hold that:

(a) the plaintiff was not illegally or unlawfully detained by the defendants at any time;

(b) there was no denial by the defendants of the plaintiff's constitutional right to consult counsel.

The claim for damages accordingly fails and I dismiss the claim with costs.

Claim dismissed.

Solicitors: *Karpal Singh & Wong.*

MICHAEL CHONG NGIAN FONG v. SYARIKAT FONG SAM TIMBER & ANOR.

[O.C.J. (Ajaib Singh J.) January 30, 1976]
[Seremban — Bankruptcy No. 23 of 1975]

Bankruptcy — Procedure — Irregular notice and petition — Notice issued jointly by two judgment creditors — Notice and petition silent on liquidated sum — Whether irregularity curable — Bankruptcy Act, 1967, ss. 3(1)(i), 5(1)(a), 6(2) & 131 — Bankruptcy Rules 1969, r. 91(2) & (3) — Bankruptcy Act, 1883, (U.K.), s. 4(1)(g).

On July 4, 1975, a bankruptcy notice dated June 21, 1975 was served on the debtor (applicant). The notice was based on the judgment of April 21, 1975 which the petitioning creditors had against the debtor in default of defence. The sum of $96,200 payable by the debtor to each of the petitioning creditors under the judgment and interest thereon were set out. In the notice, two further items for interest were also entered but the sums for these were left blank as they referred to interest due up to date of payment. The bankruptcy notice received no response whereupon the petitioning creditors filed a bankruptcy petition dated September 4, 1975 and served on the debtor on September 12, 1975. Before the petition could be heard the debtor applied by notice of motion to set aside both the bankruptcy notice and the bankruptcy petition.

The debtor claimed that the notice was a nullity because it was issued on the basis of two judgment debts owing to the two petitioning creditors and therefore there was no act of bankruptcy upon which the bankruptcy petition could have been issued. It was also contended that the sums claimed were confusing as they did not reflect the judgment on which they were based and that the total amounts claimed in the notice and in the petition did not constitute liquidated sums.

Counsel for the petitioning creditors submitted that the debtor was not misled in any way and that if at all, it was a mere irregularity curable by section 131 of the Bankruptcy Act, 1967.

Held, setting aside the bankruptcy notice and petition: (1) the petitioning creditors had jointly issued the bankruptcy notice against the debtor despite the absence of any provision entitling them to do so under the Bankruptcy Act and they had failed to indicate in the notice as well as in the petition that the debt owing by the debtor was a liquidated sum payable either immediately or at some certain future time;

(2) this amounted to a flagrant disregard of the provisions relating to the issue of the bankruptcy notice and the bankruptcy petition which could not be cured by section 131 of the Bankruptcy Act.

Cases referred to:-

(1) *In Re Low. Ex Parte The Argentine Gold Fields, Limited* [1891] 1 Q.B. 147.

(2) *Re A Debtor (No. 20 of 1953). Ex Parte The Debtor v. Scott & Anor.* [1954] 3 All E.R. 74.

(3) *In re Debtors (No. 669 of 1926)* [1927] 1 Ch. 19.

(4) *Rengasamy Pillai v. Comptroller of Income Tax* [1970] 1 M.L.J. 233.

BANKRUPTCY.

N. Ramachandran for the applicant/debtor.

Khaw Yew-Mei for the respondents/petitioning creditors.

Ajaib Singh J.: This was an application by the debtor in a bankruptcy petition for an order that the bankruptcy notice issued against him by two petitioning creditors be set aside on the ground of irregularity and that the bankruptcy petition issued against him pursuant to the bankruptcy notice be also set aside on the same ground. Alternatively the applicant prayed that if the court holds that the bankruptcy notice and the bankruptcy petition had been regularly issued the hearing of the bankruptcy petition be stayed pending the hearing and determination of an application on the part of the debtor to set aside the judgment on which the bankruptcy notice and the bankruptcy petition were based.

The circumstances leading to the present application were as follows. In Civil Suit No. 158 of 1974 filed in the Seremban High Court the two petitioning creditors sued the debtor for two sums of money — $96,250 and $25,000 plus interest thereon. In Civil Suit No. 463 of 1974 filed in the Kuala Lumpur High Court the first petitioning creditor sued two individuals trading as Syarikat Jaya Timber Enterprise for the sum of $96,250 and interest thereon and in another Civil Suit No. 464 of 1974 filed in the Kuala Lumpur High Court the second petitioning creditor sued the same two individuals trading as Syarikat Jaya Timber Enterprise for $96,250 and interest thereon. Upon application by the two petitioning creditors in their respective civil suits the two civil suits filed in the Kuala Lumpur High Court were transferred to the Seremban High Court and renumbered here as Civil Suit Nos. 13 and 14 of 1975 respectively. Thereafter all the three suits were consolidated by order of court obtained at the instance of the two petitioning creditors. The two individuals trading as Syarikat Jaya Timber Enterprise did not enter any appearance. The applicant entered an appearance but did not deliver a defence whereupon the two petitioning creditors obtained judgment on April 21, 1975 against all the defendants in